

CASE NUMBER: 034252/2022

## AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION (Motion #001) - Affirmation in Support of Motion to Dismiss in ...

Document prepared for:  
kevin barlow

**CASE NAME**

Rosemarie Mckinnis Est Of, Kathleen Mckinniss, Carin  
Rosado, James Finn Est Of, Geraldine Finn Exr v. Ecohealth  
Alliance Inc, Peter Daszak, Janet D Cottingham Aka, Janet  
Dasz...

**CASE FILING DATE**

Oct. 5th, 2022

**DOCUMENT FILED DATE**

Feb. 21st, 2023

**COUNTY**

Rockland county, NY

**JUDGE**

Sherri L Eisenpress

**CATEGORY**

Torts - Environmental (SARS-COV-2)

**STATUS**

Active

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

IN RE SARS-CoV-2;  
KATHLEEN MCKINNISS, PROPOSED  
REPRESENTATIVE OF THE ESTATE OF  
ROSEMARIE MCKINNISS, DECEASED; CARIN  
ROSADO, individually; and GERALDINE FINN, AS  
EXECUTOR OF THE ESTATE OF JAMES FINN,  
DECEASED,

Plaintiffs,

-against-

ECOHEALTH ALLIANCE, INC., PETER DASZAK,  
JANET D. COTTINGHAM a/k/a JANET DASZAK,  
RALPH BARIC, W. IAN LIPKIN, and JOHN AND  
JANE DOES 1-1000,

Defendants.

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**AFFIRMATION OF ADAM R.  
DOLAN, ESQ., IN SUPPORT  
OF DR. RALPH BARIC'S  
MOTION TO DISMISS**

ADAM R. DOLAN, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following to be true, upon penalty of perjury.

1. I am a Partner at Gfeller Laurie, LLP, attorneys for Defendant Dr. Ralph Baric, i/s/h/a Ralph Baric (hereinafter "Dr. Baric") in the above captioned matter, and, as such, I am fully familiar with the facts and circumstances set forth herein based upon a review of the file maintained by my office.

2. I make this Affirmation in support of Dr. Baric's motion, for an Order: (1) pursuant to CPLR § 3211(a)(1)(7)(8), dismissing Plaintiffs' Complaint as against Dr. Baric for failing to state a cause of action, because of defenses founded upon documentary evidence and because Plaintiffs do not have personal jurisdiction over Dr. Baric's person; and (2) granting such other and further relief as the Court may deem just and proper.

3. This is a toxic tort personal injury action commenced by Plaintiffs to recover damages they allegedly sustained as a result of the Sars-CoV-2 virus (hereinafter “Covid-19 virus”). As a result of the alleged negligence of Defendants, the Plaintiffs claim they sustained personal injuries and in two instances, suffered death due to their exposure to Covid-19.

4. Despite these allegations, Plaintiffs’ claims against the Dr. Ralph Baric should be dismissed due to their failure to state a cause of action, due to documentary evidence included herein and due to the Plaintiffs’ failure and inability to obtain personal jurisdiction over Dr. Baric. As will be borne out within Dr. Baric’s attached memorandum of law, the case and statutory law that New York Courts have long adhered to should result in the dismissal of Plaintiffs’ claims against Dr. Baric.

### **PROCEDURAL HISTORY**

5. Plaintiff commenced this action by filing a summons and complaint on or about October 5, 2022. (NYSCEF #1 & 16). A copy of the complaint is annexed hereto as **Exhibit “A”**.

6. For purposes of judicial economy, exhibits 1-12 of the Plaintiffs’ complaint (NYSCEF #'s 3-15), are combined and attached hereto as **Exhibit “B”**.

7. On or about October 27, 2022, the parties entered into a stipulation extending Defendants’ time to file a responsive pleading to December 9, 2022. (NYSCEF #31). On December 7, the parties entered into a further stipulation extending Defendants’ time to file a responsive pleading to January 30, 2023. (NYSCEF #35). On January 27, 2023, the parties entered into a further and final stipulation extending Defendants’ time to file a responsive pleading to February 20, 2023. (NYSCEF #62). Due to February 20, 2023, being a federal holiday, the Defendants’ time to file a responsive pleading was extended until February 21, 2023. For purposes

of judicial economy, copies of the stipulations extending Defendants' time to file responsive pleadings are attached hereto as **Exhibit "C"**.

8. On January 4, 2023, Plaintiff filed an Amended Complaint. (NYSCEF #36). A copy of the Amended Complaint is annexed hereto as **Exhibit "D"**.

9. For purposes of judicial economy, exhibits 13-37 of the Plaintiffs' complaint (NYSCEF #'s 37-61), are combined and attached hereto as **Exhibit "E"**.

10. As such, this motion is timely.

11. Annexed hereto are true and correct copies of the following documents offered in support of this motion and referenced in Dr. Baric's accompanying Memorandum of Law In Support of Motion to Dismiss:

Exhibit A: Plaintiff's Summons and Complaint, dated October 6, 2022;

Exhibit B: Supporting Exhibits to Plaintiffs' Summons and Complaint;

Exhibit C: Multiple stipulations Extending Defendants' Time to File Responsive Pleadings, dated October 27, 2022, December 7, 2022 and January 27, 2023;

Exhibit D: Plaintiffs' Amended Complaint;

Exhibit E: Supporting Exhibits to Plaintiffs' Amended Summons and Complaint;

Exhibit F: Affidavit of Ralph Baric, Ph.D.

12. For all of the reasons set forth herein and in the accompanying Memorandum of Law, it is respectfully requested that the Court grant the instant motion in its entirety and issue an Order: (1) pursuant to CPLR §3211(a)(1)(7)(8), dismissing Plaintiffs' complaint as against Dr. Ralph Baric with prejudice for failing to state a cause of action, due to documentary evidence produced in support of dismissal and for lack of personal jurisdiction over the person of Dr. Ralph Baric; and (2) granting such other and further relief as the Court may deem just and proper.

Dated: Tarrytown, New York  
February 21, 2023

**GFELLER LAURIE LLP**



By: \_\_\_\_\_  
Adam R. Dolan, Esq.